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RUEHDK/AMEMBASSY DAKAR 2284
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RUEHNR/AMEMBASSY NAIROBI 5137
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RHEHAAA/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 HARARE 000029

SIPDIS

AF/S FOR B. WALCH
DRL FOR N. WILETT
ADDIS ABABA FOR USAU
ADDIS ABABA FOR ACSS
STATE PASS TO USAID FOR E. LOKEN AND L. DOBBINS
STATE PASS TO NSC FOR SENIOR AFRICA DIRECTOR B. PITTMAN

E.O. 12958: DECL: 01/09/2019
TAGS: PGOV PREL ASEC PHUM KDEM ZI
SUBJECT: TORTURE, TERRORISM, AND THE RED VAN: UPDATE ON
COURT CASES

REF: A. HARARE 18
 1B. 08 HARARE 1147
 1C. 08 HARARE 1145
 1D. IIR 6 926 0036 09

Classified By: Ambassador James D. McGee for reason 1.4(d).

SUMMARY

11. (C) Court cases continue for 18 Zimbabweans abducted between late October and mid-December who face various accusations related to terrorism, banditry, and mounting an armed insurgency. Prominent human rights activist Jestina Mukoko and eight others remain in custody until their next appearance on January 14, pending High and Supreme Court cases. On January 7, seven abductees were formally charged with terrorism in association with various police station bombings. Physicians have examined the 18 and found evidence of torture, although police have refused to honor court orders that would allow them treatment. Finally, on January 8, charges against the three white Zimbabweans arrested on January 6 were dropped. Of the 32 individuals who have been abducted since October 31, 14 remain unaccounted for. Despite Morgan Tsvangirai's December 19 statement that he would not resume negotiations unless abductees were charged or appeared in state custody, the MDC has not made any statements regarding either the cases or those that are still missing. END SUMMARY.

Torture Documented; AG's Office Says Evidence "Not Credible"

12. (C) In compliance with a magistrate's decision on December 29, Jestina Mukoko and others were examined for torture on December 30 by physicians from the Counseling Services Unit at a prison hospital (refs B and C). Prison personnel witnessed the exams. CSU shared the exam affidavits with us,

which show that nearly all of the abductees were blindfolded, beaten and/or kicked, and threatened; most were subjected to solitary confinement and some experienced significant weight loss. Their captors used other forms of torture including electric cables, sodomy, burning with hot water, and suspension upside down (one man's head was forced repeatedly into a bucket of water while he was suspended). Many victims require more extensive examination, such as x-rays, to better evaluate the extent of injury.

13. (U) Despite continued requests that the victims be released from prison facilities - under guard if necessary - for additional examination and treatment, all remain in prison. Lawyers have applied to the High Court to try to secure another ruling to compel police to release them to a private clinic, but the case has not been heard yet. In a hearing on January 6, the prosecutor said that the evidence of torture was "not credible." In a bail hearing on January 8, three accused of a bombing plot testified about beatings, forced confessions, and torture in state custody before they were sent to police custody on December 23. The hearing was set to continue on January 9.

Terrorism Case #1: Mukoko Seven Baby

14. (SBU) Zimbabwe Peace Project Director Jestina Mukoko and seven others (plus two-year-old Nigel Mutemagau) accused of banditry and terrorism in connection with an alleged plot to

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train armed insurgents in Botswana remain in State custody and have not yet been formally charged with any crime. On December 31, the High Court heard an urgent application from Mukoko's lawyers, calling on the State to identify the names and locations where Mukoko was held in custody. Minister of State Security Didymus Mutasa filed a carefully worded affidavit implicitly admitting the State's role in the abductions and refusing to disclose any identifying aspects of the location or persons involved in the operation, saying that it was necessary for State security. On January 2, High Court Justice Alphus Chikayunye sided with the State, agreeing to keep the details of Mukoko's abduction secret.

15. (SBU) In bail hearings on January 5 and 6, the State continued to oppose bail, arguing that because of the serious charges they should remain in custody. Lawyers on both sides have filed appeals and counter-appeals that are in the High Court and Supreme Court, with defense lawyers arguing, in part, that they were brought to court through illegal procedures and that charging them would legitimize State kidnapping. The magistrate deferred the case to January 14, to allow time for the High and Supreme Courts to review the appeals before them. Until then, all nine will remain in custody.

Terrorism Case #2: The Seven (Alleged) Bombers

16. (SBU) On January 6, the State filed formal charges against a group of seven men for their alleged involvement in various police station bombings. They could face the death penalty for the charge under section 23 (1) of the Criminal Act, which criminalizes insurgency, banditry, sabotage, or terrorism. Their lawyer said the charges border on "silliness and senselessness." In their bail hearing on January 7 and 8, the defense pointed out the numerous inconsistencies and impossible claims the State continues to make. For instance, the State claims all seven participated in the physically impossible task of simultaneously planting two bombs in completely different locations. (NOTE: Previous reporting (ref D) indicated that at least one of the police station bombings was carried out by soldiers seeking to destroy evidence in a fingerprint lab that would have

connected them to theft of supplies at a military hospital.
END NOTE.)

Terrorism Case #3: The Two in Legal Limbo

17. (SBU) Two other accused persons, Tawanda Bvumo and Pascal Gonzo, were supposed to be removed from remand and released on December 29. The State appealed, but the magistrate refused to hear the appeal on January 6, declaring that another magistrate had already decided. The two remain in prison, and it is unclear when or if their case will be reviewed by another magistrate or judge.

(Dropped) Terrorism Case #4: The White Landowners

18. (SBU) On January 6, three white men who own land just east of Harare were arrested at their homes (ref A). At the time, police said they were being taken for violating section 24(b) of the Criminal code, for providing training for committing insurgency, banditry, or terrorism. The charges were dropped on the morning January 8, but all three men were still in police custody 24 hours later.

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Mystery of The Red Van Resolved

19. (SBU) In numerous court appearances, accused persons have been brought to court in a red Volkswagen van with South African license plates. The same van was reportedly used by State security agents to transport Mukoko, Takawira, and others between locations before they were released to the police on December 22. This week the press unraveled the mystery and reported that the van had been used by a team of Sky News journalists from South Africa. The journalists were arrested in Zimbabwe in May 2008 and police confiscated all of their equipment and the van before the trio was deported to South Africa.

COMMENT: Where is the outrage?

10. (C) The now-familiar charade of court hearings in Zimbabwe continues to play out in a pattern more predictable than most TV courtroom dramas. Although Morgan Tsvangirai publicly delivered an ultimatum to the GOZ on December 19, saying he would pull out of talks unless the abductees surfaced by January 1, he and the MDC continue to be silent on the issue. With at least 14 abductees still missing, his ultimatum has clearly not been met, and his continued silence is a sign that he's not willing to make good on his threats. If Tsvangirai and Mugabe return to the negotiating table, Tsvangirai's poor handling of the abductions issue will weaken his negotiating position--and his credibility with his own constituency. END COMMENT.

MCGEE